

REMARKS

This application has been reviewed in light of the Office Action dated May 4, 2007. Claims 1-18 are presented for examination. Claim 19 has been canceled, without prejudice or disclaimer of subject matter recited therein. Claims 1, 4, 5 and 9 have been amended to define more clearly what Applicants regard as their invention. Claim 1 is in independent form. Favorable reconsideration is requested.

Claims 1-19 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Cancellation of Claim 19 renders its rejection moot. The Office Action states “Claims 1, 5 and 19 utilize the term ‘configured to’ in the body of the claim. This language makes the claim indefinite because it is not clear whether the limitations following [the term] are positively recited or not.” *See* Office Action, page 4. Applicants respectfully disagree with this characterization. The phrase “configured to” clearly defines the structure required by the claimed system. The phrase does not make the limitations followed by it optional and instead sets forth explicit requirements for the structure of the claimed system. Furthermore MPEP § 2111.04 addresses the use of phrases analogous to “configured to” within system claims, stating:

The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a “‘whereby’ clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.” *Id.* However, the court noted (quoting *Minton v. Nat’l Ass’n of Securities Dealers, Inc.*, 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a “‘whereby’ clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited.” *Id.*

MPEP § 2111.04 (emphasis added).

Applicants maintain that the structure of a claimed system is clearly material to patentability and thus cannot be ignored or rendered optional as the Office appears to assert. Should the Office maintain this rejection then Applicants respectfully request further guidance as to the legal basis for the rejection. In view of the above comments, it is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

The Office Action states that Claims 1-16, 18, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,070,142 (*McDonough*); and that Claim 17 is rejected as under 35 U.S.C. § 103(a) as being unpatentable over *McDonough* in view of U.S. Patent No. 6,014,646 (*Cunningham*). Cancellation of Claim 19 renders its rejection moot. Applicants submit that amended independent Claim 1, together with the claims dependent therefrom, are patentably distinct from the cited prior art for at least the following reasons.

Amended Claim 1 recites the feature “at least one customer...adds one or more new worker utilities...wherein the one or more new worker utilities are utilized to facilitate event request fulfillment...on behalf of [that customer and]...at least one other customer.” Support for the amendments to Claim 1 can be found in at least page 7, lines 24-29 of the Specification. By virtue of the features recited in Claim 1, customers of the acquisition system can fulfill requests from their clients through worker utilities that are shared among multiple customers. Thus, instead of each customer developing, operating, and maintaining a separate infrastructure for processing events, each customer can access a single worker utility to facilitate that event.

In stark contrast, the system of *McDonough* lacks such sharing of worker utilities. As understood by Applicants, *McDonough* utilizes Voice Response Units (VRUs) 320, which receive a customer request and initiate navigation to a resource that can fulfill the customer's request. If it is determined that a call should be directed to a particular resource for fulfillment of the request, the VRUs are understood to interact with a routing engine 360 through a Computer Telephone Interface (CTI) 370 to initiate transfer of the call to the appropriate employee for servicing. *See e.g. McDonough* Column 7, lines 25-40 and Column 8, lines 24-34).

McDonough's call center system appears to lack the concept of plural customers and plural clients. In Claim 1, "a plurality of customers employ the computerized account processing system to facilitate event request fulfillment for the one or more clients." For example, customers may be various credit card companies that employ the acquisition system to process credit applications from clients on their behalf. *See e.g. Specification* page 12 line 25 – page 14, line 19. In *McDonough* there appears to be only one customer of the call routing system, *i.e.* the call center itself. Furthermore, nothing has been found in *McDonough* to teach or reasonably suggest "at least one customer...adds one or more new worker utilities...wherein the one or more new worker utilities are utilized to facilitate event request fulfillment...on behalf of [that customer and]...at least one other customer," as recited by Claim 1. There is simply no sharing of worker utilities by different customers in *McDonough*.

Cunningham fails to cure the deficiencies identified above with regard to *McDonough*. In particular, nothing has been found in *Cunningham* to teach or suggest "at least one customer...adds one or more new worker utilities...wherein the one or more new

worker utilities are utilized to facilitate event request fulfillment...on behalf of [that customer and]...at least one other customer,” as recited by Claim 1.

Accordingly, Applicants submit that Claim 1 is allowable over *McDonough* and *Cunningham*, taken separately or in any permissible combination, if any, and respectfully request withdrawal of the rejection under 35 U.S.C § 103(a).

The other rejected claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Because each dependent claim also is deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the above amendments and remarks, Applicants respectfully request favorable consideration and early passage to issue of the present application.

Applicants undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Jonathan Berschadsky/
Jonathan Berschadsky
Attorney for Applicants
Registration No. 46,551

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2100

FCHS_WS 1416350_1.DOC